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FILE NO. 94-017

ZONING:

Authority of a County or a
Municipality to Enact Ordinances
Restricting the Placement of
Manufactured Homes

Honorable Frank C. Watson
Assistant Majority Leader
Illinois State Senate
Room 123, State Capitol
Springfield, Illinois 62706

Dear Senator Watson:

I have your letter wherein you inquire whether non-home-rule counties and municipalities may: 1) regulate or prohibit the placement within their jurisdiction of manufactured homes which were produced prior to June 15, 1976; and 2) require manufactured homes produced after June 15, 1976, to satisfy construction and safety standards other than those set out in the National Manufactured Housing Construction and Safety Standard Act of 1974 (42 U.S.C. § 5401 et seq.) and the rules promulgated thereunder (24 C.F.R. § 3282 et seq. (1993)). For the reasons hereinafter stated, it is my opinion that non-home-rule counties and non-home-rule municipalities may restrict, but not prohibit,

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the placement within their jurisdiction of manufactured homes as an exercise of their zoning powers. Furthermore, non-home-rule counties and non-home-rule municipalities may enact reasonable building and construction standards for manufactured homes which were produced prior to June 15, 1976, and may prohibit the use within their jurisdiction of manufactured homes which do not satisfy those standards. Lastly, it is my opinion that local ordinances and enforcement practices which purport to require the satisfaction of standards other than those of the National Manufactured Housing and Safety Construction Standards Act of 1974 and its related rules for structures that meet the Act's definition of a manufactured home, and which were produced on or after June 15, 1976, are preempted by Federal law.

Addressing your second question first, in 1974, Congress determined that it was necessary to establish Federal construction and safety standards for manufactured homes. To this end, the National Manufactured Housing Construction and Safety Standards Act of 1974 was enacted "* * * to reduce the number of personal injuries and deaths and the amount of insurance costs and property damage resulting from manufactured home accidents and to improve the quality and durability of manufactured homes". (42 U.S.C. § 5401.)

To implement the provisions of the Act, Congress authorized the Secretary of Housing and Urban Development, in

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consultation with the Consumer Product Safety Commission, to establish Federal manufactured home construction and safety standards. (42 U.S.C. § 5403(a).) Pursuant to this grant of authority, the Secretary of the Department of Housing and Urban Development has promulgated Federal manufactured home construction and safety standards which apply to all manufactured homes produced in the United States on or after June 15, 1976. (24 C.F.R. § 3282.1 (1993).) As used in the Act and its implementing rules, the term "manufactured home" means:

" * * *

* * * a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary and complies with the standards established under this chapter;

* * *

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(42 U.S.C. § 5402(6).)

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Further, subsection 5403(d) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. § 5403(d)) provides:

" * * *

Whenever a Federal manufactured home construction and safety standard established under this chapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard.

* * *

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(Emphasis added.)

It is clear that Congress has preempted the authority of State and local governments to impose construction and safety standards upon manufactured homes produced on or after June 15, 1976, which differ in any respect from those developed by the Secretary of Housing and Urban Development. (Scurlock v. City of Lynn Haven, Florida (11th Cir. 1988), 858 F.2d 1521, 1524; Woolridge v. Redman Homes, Inc. (N.D. Tex. 1991), 792 F. Supp. 1469, 1470-1; Village of Moscow v. Skeene (Ohio App. 1989), 585 N.E.2d 493, 495.) Thus, if a non-home-rule county's or a non-home-rule municipality's ordinances condition the entry or sale of a manufactured home into the particular governmental unit upon compliance with differing standards, thereby forcing

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manufacturers to meet construction and safety requirements other than the Housing and Urban Development Standards in order to do business in the particular governmental unit, the county or municipal ordinance would be invalid. Consequently, it is my opinion that local ordinances and enforcement practices which require the satisfaction of standards for manufactured homes produced after June 15, 1976, other than those contained in the National Manufactured Housing Construction and Safety Standards Act of 1974 and its rules, are preempted by the Act.

Turning to your first inquiry, it is well established that non-home-rule counties possess only those powers which are expressly granted to them by the constitution or by statute, together with those powers necessarily implied therefrom to effectuate the powers which have been granted. (Redmond v. Novak (1981), 86 Ill. 2d 374, 382; Heidenreich v. Ronske (1962), 26 Ill. 2d 360, 362.) Section 5-12001 of the Counties Code (55 ILCS 5/5-12001 (West 1992)) provides, in pertinent part:

"Authority to regulate and restrict location and use of structures. For the purpose of promoting the public health, safety, morals, comfort and general welfare, conserving the values of property throughout the county, lessening or avoiding congestion in the public streets and highways, and lessening or avoiding the hazards to persons and damage to property resulting from the accumulation or runoff of storm or flood waters, the county board or board of county commissioners, as the case may be, of each county, shall have the power to regulate and restrict the location and use of buildings,

structures and land for trade, industry, residence and other uses which may be specified by such board, to regulate and restrict the intensity of such uses, to establish building or setback lines on or along any street, trafficway, drive, parkway or storm or floodwater runoff channel or basin outside the limits of cities, villages and incorporated towns which have in effect municipal zoning ordinances; to divide the entire county outside the limits of such cities, villages and incorporated towns into districts of such number, shape, area and of such different classes, according to the use of land and buildings, the intensity of such use (including height of buildings and structures and surrounding open space) and other classification as may be deemed best suited to carry out the purposes of this Division; to prohibit uses, buildings or structures incompatible with the character of such districts respectively; and to prevent additions to and alteration or remodeling of existing buildings or structures in such a way as to avoid the restrictions and limitations lawfully imposed hereunder: * * *

* * *

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(Emphasis added.)

Under section 5-12001, county boards have been granted the express authority, with certain exceptions, to regulate the placement and use of buildings and structures as an exercise of their zoning powers. Therefore, it is my opinion that non-home-rule counties possess, through their zoning powers, the general authority to restrict the location of all manufactured homes within their boundaries. (Clark v. Winnebago County (7th Cir, 1987), 817 F.2d 407, 409.) It is clear, however, that although the location of manufactured homes may be regulated through the

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exercise of zoning powers, their use may not be prohibited altogether. (See Oak Forest Mobile Home Park v. City of Oak Park (1975), 27 Ill. App. 3d 303, 318.) The validity of county zoning ordinance provisions is not dependent upon the date of manufacture of a manufactured home.

In addition to regulating the location of manufactured homes, county boards are also authorized to adopt reasonable construction and safety standards for buildings and structures. In this regard, section 5-1063 of the Counties Code (55 ILCS 5/5-1063 (West 1992)) provides, in pertinent part:

" * * *

* * * For the purpose of promoting and safeguarding the public health, safety, comfort and welfare, a county board may prescribe by resolution or ordinance reasonable rules and regulations (a) governing the construction and alteration of all buildings, structures and camps or parks accommodating persons in house trailers, house cars, cabins or tents and parts and appurtenances thereof and governing the maintenance thereof in a condition reasonably safe from hazards of fire, explosion, collapse, electrocution, flooding, asphyxiation, contagion and the spread of infectious disease, where such buildings, structures and camps or parks are located outside the limits of cities, villages and incorporated towns, * * * (b) for prohibiting the use for residential purposes of buildings and structures already erected or moved into position which do not comply with such rules and regulations; * * *

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The provisions of section 5-1063 of the Code apply to all buildings and structures which are located outside the limits of a municipality (see generally Williams v. Stanfill (1990), 202 Ill. App. 3d 696, 703, appeal denied 136 Ill. 2d 556 (1991)), including manufactured homes.

As previously discussed, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the rules promulgated thereunder have preempted State and local construction and safety regulations with regard to those manufactured homes produced after June 15, 1976. With respect to manufactured homes produced prior to June 15, 1976, however, the authority of a county to promulgate building regulations has not been preempted by Federal law. Therefore, the issue is the reasonableness of county ordinances which regulate construction standards for such manufactured homes.

In reviewing the information which has been submitted in support of your opinion request, it is unclear whether any manufactured homes which were produced prior to June 15, 1976, will satisfy the National Manufactured Housing Construction and Safety Standards Act of 1974 and the rules promulgated thereunder, or other safety standards which may be adopted by a county. I do not believe, however, that a county may per se prohibit placement within its jurisdiction of manufactured homes which were produced prior to June 15, 1976, based solely upon

their date of manufacture. A county may only adopt reasonable safety standards which must be complied with before such a manufactured home could be used as a dwelling or for other purposes within the county. Consequently, it is my opinion that the owner of a manufactured home must be allowed the opportunity to show that a particular home meets the specified safety requirements; if a manufactured home is excluded solely because it was manufactured prior to June 15, 1976, then the county's ordinance regarding building and construction standards would be unreasonable.

The issue of whether a non-home-rule municipality possesses the authority to enact an ordinance prohibiting the placement of certain manufactured homes within its jurisdiction also turns on the extent of a non-home-rule municipality's zoning powers, and a determination of whether any municipal construction standards which have been adopted are reasonable. It is well established that non-home-rule municipalities possess only those powers which are expressly granted to them by statute, together with those powers which are necessarily implied therefrom to effectuate the powers which are considered indispensable to the accomplishment of the purposes of a municipal corporation.

(Scadron v. City of Des Plaines (1992), 153 Ill. 2d 164, 174.)

In this regard, section 11-13-1 of the Illinois Municipal Code (65 ILCS 5/11-13-1 (West 1992)) provides, in pertinent part:

"To the end that adequate light, pure air, and safety from fire and other dangers may be secured, that the taxable value of land and buildings throughout the municipality may be conserved, that congestion in the public streets may be lessened or avoided, that the hazards to persons and damage to property resulting from the accumulation or runoff of storm or flood waters may be lessened or avoided, and that the public health, safety, comfort, morals, and welfare may otherwise be promoted, and to insure and facilitate the preservation of sites, areas, and structures of historical, architectural and aesthetic importance; the corporate authorities in each municipality have the following powers:

- (1) To regulate and limit the height and bulk of buildings hereafter to be erected;
- (2) to establish, regulate and limit, * * * the building or set-back lines on or along any street, traffic-way drive, parkway or storm or floodwater runoff channel or basin;
- * * * (4) to classify, regulate and restrict the location of trades and industries and the location of buildings designed for specified industrial, business, residential, and other uses;
- (5) to divide the entire municipality into districts of such number, shape, area, and of such different classes (according to use of land and buildings, height and bulk of buildings, intensity of the use of lot area, area of open spaces, or other classification) as may be deemed best suited to carry out the purposes of this Division 13;
- (6) to fix standards to which buildings or structures therein shall conform;
- (7) to prohibit uses, buildings, or structures incompatible with the character of such districts;
- (8) to prevent additions to and alteration or remodeling of existing buildings or structures in such a way as to avoid the restrictions and limitations lawfully imposed under this Division 13; * * *

* * *

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(Emphasis added.)

Under the language quoted above, it is clear that the corporate authorities of a municipality have been granted the express authority to regulate the placement and use of buildings and structures, including manufactured homes, through the exercise of their zoning powers. (Johnson v. City of Elgin (1975), 31 Ill. App. 3d 250, 255-6.) They may not, however, prohibit the use of manufactured housing altogether. See Oak Forest Mobile Home Park v. City of Oak Park (1975), 27 Ill. App. 3d 303, 318.

In addition to regulating the placement of manufactured homes, the corporate authorities of a municipality are also authorized to adopt building, plumbing, electrical wiring and fire prevention codes for buildings and structures which are located within their boundaries. (65 ILCS 5/1-3-1, 5/1-3-2 (West 1992).) In this regard, our courts have held that a municipality may impose reasonable building restrictions for the protection of public health and safety (Eggert v. Board of Appeals of City of Chicago (1963), 29 Ill. 2d 591, 599), and may require the modification of buildings or structures which predate a corrective ordinance. Kaukas v. City of Chicago (1963), 27 Ill. 2d 197, 201, appeal dismissed, 375 U.S. 8, 84 S.Ct. 67 (1963); City of Chicago v. Kutil (1976), 43 Ill. App. 3d 826.

As previously noted, the National Manufactured Housing Construction and Safety Standard Act of 1974 preempts State and

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local regulation only with respect to manufactured homes which were produced after June 15, 1976. Therefore, non-home-rule municipalities, as well as counties, possess the authority to prescribe regulations for the construction, alteration and maintenance of manufactured homes which were produced prior to June 15, 1976. The determination of whether a municipality has acted reasonably with regard to construction safety standards, however, will depend upon whether a manufactured home produced prior to June 15, 1976, satisfies the prescribed standards, and whether a homeowner has the opportunity to show that a particular home is in compliance with those standards. If the homeowner is not provided such an opportunity, then it is my opinion that the municipality's regulations would be invalid.

Respectfully yours,

A handwritten signature in cursive script, reading "Roland W. Burris". The signature is written in dark ink and is centered below the typed name.

ROLAND W. BURRIS
ATTORNEY GENERAL